

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 15, 2007 Session

JUDITH ANN FORD v. JAMES W. ROBERTS, ET AL.

**Appeal from the Chancery Court for Hamilton County
No. 01-0846 Howell N. Peoples, Chancellor**

No. E2007-00088-COA-R3-CV - FILED DECEMBER 20, 2007

Plaintiff sought to obtain an easement for access to her allegedly landlocked property via a gravel driveway on defendants' property, purportedly the only reasonable means for ingress and egress. Plaintiff's complaint prayed for relief by way of an easement by prescription or, in the alternative, by condemnation pursuant to Tenn. Code Ann. § 54-14-101, *et seq.* (2004). Following a hearing, the trial court denied plaintiff's request for a prescriptive easement. After amendment of plaintiff's complaint, her claim for statutory condemnation proceeded before a jury of view. Defendants appeal the trial court's action allowing plaintiff to amend her original complaint following the first hearing. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Gary D. Lander, Chattanooga, Tennessee, for the appellants, James W. Roberts and Martha C. Roberts.

Michele L. Coffman, Chattanooga, Tennessee, for the appellee, Judith Ann Ford.

OPINION

I.

On July 26, 2001, Judith Ann Ford ("Plaintiff"), initiated this action seeking an easement by prescription and necessity, or, in the alternative, an easement by condemnation for a driveway under

Tenn. Code Ann. § 54-14-101, *et seq.*¹ The gravel access road over which Plaintiff seeks an easement is located on the property of James Roberts and Martha Roberts (“Defendants”). The road is approximately twelve feet in width.²

After answering the original complaint on September 4, 2001, Defendants filed a motion on October 8, 2001, seeking a dismissal of the claim for statutory condemnation. They asserted that Plaintiff had failed to specifically address in her complaint the particular requirements of Tenn. Code Ann. § 54-14-101, *et seq.* After hearing oral argument on October 22, 2001, the trial court denied the motion to dismiss on November 2, 2001. The order, prepared by Defendants’ counsel, did not state a reason for the denial. There is no transcript of the oral argument on the motion.

After Defendants waived their right to a jury trial, this matter was heard on April 22, 2002. Defendants’ counsel, in his opening statement, acknowledged the legal theories of both an easement by prescription and necessity, or, in the alternative, an easement by condemnation.³ After hearing the evidence in support of a prescriptive easement, the trial court dictated a memorandum opinion from the bench in which it denied relief on that ground:

It seems that the use that Ms. Ford would make of the property or the easement would probably be of little or no significance considering the use that it already has by other parties; however, she’s not entitled to an easement by prescription under the facts presented to the court.

She may be entitled to an easement by necessity by use of the statutory procedure for establishing an easement by necessity or an easement by private condemnation, but the evidence is not sufficient to establish adverse possession.

¹Pursuant to Tenn. Code Ann. § 54-14-101(a)(1), Plaintiff must prove that the land is surrounded or enclosed by the lands of any other person or persons who refuse to allow her a private access road. Pursuant to Tenn. Code Ann. § 54-14-102(a), Plaintiff must prove that the land is obstructed entirely from a public road or highway by the intervening lands of another that the available outlets are not adequate and convenient.

²In Defendants’ pleadings, they contend that the easement is of insufficient width to permit movement of a mobile or manufactured home onto the property. Plaintiff was a tenant of Defendants prior to these events.

³The record before us is minimal. Only excerpts of the opening statements and the trial court’s opinion as announced from the bench have been provided for our consideration. The relevant portion of the opening statement made by Defendants’ counsel is as follows:

Now, under the facts of this case, Judge, as I understand it that Ms. Ford is making a claim under two legal theories. One is she claims that she is entitled to an easement by adverse possession and the other is an easement by necessity.

The trial court then instructed Defendants' counsel to prepare the judgment. The court did not address Plaintiff's alternative claims for relief.⁴

Our review of the proceedings below is complicated by the fact that none of the current counsel were involved with this case during that time frame. Plaintiff suggests that the trial court decided to rule first on the prescriptive easement claim before addressing whether condemnation pursuant to statute was proper. According to Plaintiff, once the trial court concluded that Plaintiff lacked the necessary clear and convincing evidence of continuous, uninterrupted, and adverse use of the easement for a period of 20 years, it found that there still existed an entitlement to seek an easement by condemnation. Plaintiff asserts that, after ruling on the first claim, the trial court, within its discretion, properly allowed her to amend her initial complaint to more properly plead the cause of action for an easement by condemnation. Defendants disagree and argue that Plaintiff "abandoned" her claim for statutory condemnation. According to Defendants, Plaintiff proceeded to trial solely on her prescriptive easement claim.

When, almost three months after the trial court's oral ruling on April 22, 2002, Defendants' counsel had not lodged an order reflecting the trial court's decision, Plaintiff lodged a proposed order with the court on July 16, 2002. The order drafted by Plaintiff provided that the decision of the trial court was to dismiss the "cause of action for prescriptive easement, with prejudice" and to reserve "Plaintiff's alternative cause of action under T.C.A. § 54-14-101 et seq." The order specifically provided that "Plaintiff shall have the right to amend her complaint in accordance with T.C.A. § 54-14-101 et seq." On July 22, 2002, Defendants filed their own proposed order, omitting any provision for Plaintiff to proceed under the alternative theory.

On August 5, 2002, the trial court approved and signed Plaintiff's proposed order, which specifically recites:

Plaintiff's alternative cause of action under T.C.A. § 54-14-101 et seq. is hereby reserved and Plaintiff shall have the right to amend her complaint in accordance with T.C.A. § 54-14-101 et seq.

(Paragraph numbering in original omitted). As instructed by the order of August 5, 2002, Plaintiff prepared an amended complaint, which joined additional interested property owners and met all the statutory requirements to proceed on the claim for statutory condemnation. *See* Tenn. Code Ann. § 54-14-103. The amended complaint was answered by Defendants, who raised, *inter alia*, the following defenses:

⁴ According to Defendants, under the local rules prevailing in the Eleventh Judicial District in 2002, the attorney for the prevailing party on any matter decided from the bench was required to prepare and submit an order with the participation and approval of adverse counsel. If the opposing counsel would not agree, then each attorney was authorized to submit his own version of the order under the so-called "Five-Day Rule" along with statements of reasons for rejecting the version provided by opposing counsel. Thereafter, the trial court would enter one version of the order or prepare its own order.

SECOND DEFENSE

Since Plaintiff failed to file a motion to amend the pleadings prior to the entry of a final judgment, the purported amendment is void.

THIRD DEFENSE

Since the final judgment has been entered, the trial court is without jurisdiction to permit amendment of the pleadings.

Five and one-half months after the trial court entered the order reserving Plaintiff's right to pursue her alternative cause of action, Defendants' original counsel sought an extraordinary appeal to the Court of Appeals. Defendants argued that Plaintiff had proceeded to trial only on her claim for a prescriptive easement and had thus abandoned her claim for statutory condemnation. Defendants further asserted that the judgment was final and questioned the trial court's leave to amend Plaintiff's initial complaint. This court found that the criteria for a Rule 10 appeal had not been met and that the appeal was untimely. Our order reflected the following summary of the procedural status of the case:

In this matter, Applicants James W. Roberts and wife Martha C. Roberts file an application for a Rule 10 extraordinary appeal, questioning the Trial Court's leave to Judith Ann Ford to amend a complaint previously filed which sought a right-of-way over Applicants' property. Ms. Ford insists that she had a right-of-way by prescription and/or by necessity. The latter assertion was withdrawn prior to trial. After trial, the Chancellor found that Ms. Ford had not carried her burden of proof relative to a prescriptive easement, but the order entered finding against her also contained a provision granting her right to condemn an easement pursuant to Title 54, Chapter 14 of T.C.A.

The Tennessee Supreme Court denied an application for permission to appeal on May 27, 2004.

After an evidentiary hearing on December 9, 2004, the trial court entered an order on February 11, 2005, finding that Plaintiff's property is landlocked, that all the adjoining landowners have refused to allow Plaintiff a right-of-way across their property, and that the existing right-of-way across Defendants' property is the most feasible route for Plaintiff to enter her property. The record does not contain any objections/responses filed by Defendants' counsel.

On March 9, 2006, another motion to dismiss was filed by Defendants, this one requesting that Mr. and Mrs. Roberts be dismissed as defendants in the lawsuit. The motion was denied on April 10, 2006, at which time the trial court also denied the oral motion of Defendants' counsel to file an interlocutory appeal regarding the rejected motion, pursuant to Tenn. R. App. P. 9.

On September 14, 2006, a jury of view⁵ found in favor of Plaintiff, granting her the requested easement across Defendants' property at the same location Plaintiff had originally sought in her initial complaint. The jury of view determined that (1) the easement for ingress and egress and utilities shall be fifteen feet in width and shall be on the Roberts' property, with one minor exception involving a curve in the easement around some trees; (2) damages owed to Defendants for the property taken are \$2,100.00, and (3) incidental damages to the property owed to Defendants are \$900.00.

On September 22, 2006, Defendants' counsel filed what they styled "Bill of Exceptions and Appeal from Jury of View," opposing the verdict and alleging the jury was in error in granting the type of easement awarded, the dimensions of the easement, the deviation of the original easement, and the compensation to Defendants. On November 30, 2006, however, after Defendants' change of counsel, the Bill of Exceptions and Appeal from Jury of View filed by previous counsel was stricken. The Order Confirming Verdict and Final Judgment was entered that same day. Judgment in the amount of \$3,000 was awarded to Defendants.

II.

Defendants filed a timely appeal and raise the following issues for our review:

1. Whether the trial court erred by entering its order of August 5, 2002, to the extent that the order allowed Plaintiff to reserve an alternative cause of action under Tenn. Code Ann. § 54-14-101 *et seq.*, to amend her complaint, and to proceed to a second trial pursuant to Tenn. Code Ann. § 54-14-101, after entering judgment against Plaintiff on her claim for a prescriptive easement following a trial on the merits.
2. Whether the trial court erred in allowing Plaintiff a second trial on her claim pursuant to Tenn. Code Ann. § 54-14-101 *et seq.* and entering its Order Confirming Verdict and Final Judgment in favor of Plaintiff on November 30, 2006.

Both issues present the question of whether the trial court erred in allowing Plaintiff to amend her complaint after the first hearing.

Defendants assert that the trial court abused its discretion when it entered the order of August 5, 2002, allowing Plaintiff to amend her complaint to state more fully and to prosecute the "alternative" claim for a statutory condemnation that was contained in her original complaint but,

⁵ A jury of view consists of five disinterested persons having all of the qualifications of jurors in the circuit court, unless the parties agree otherwise or upon a different number, and either party may challenge for cause or peremptorily as in other civil cases. Tenn. Code Ann. §§ 54-14-107 to -111.

according to Defendants, was abandoned in the first trial. Defendants claim the trial court consequently erred by entering a final judgment for Plaintiff on November 30, 2006, after a second trial, pursuant to the procedure for statutory condemnation found in Tenn. Code Ann. § 54-14-101 *et seq.* Defendants posit that the subsequent final judgment of November 30, 2006, in favor of Plaintiff is a nullity and is also barred by the doctrine of *res judicata*.

Plaintiff asserts that the trial court, after finding that an easement by prescription had not been established, validly used its discretion in allowing Plaintiff to pursue her alternative cause of action, requested in the original complaint, which prayed for relief by condemnation pursuant to Tenn. Code Ann. § 54-14-101 *et seq.* Plaintiff contends that the order of August 5, 2002 was a proper exercise of judicial discretion in accordance with both the Tennessee Rules of Civil Procedure and the local rules of Hamilton County. She further argues that the final judgment entered November 30, 2006, which found that Plaintiff met the legal requirements for an easement pursuant to Tenn. Code Ann. § 54-14-101 *et seq.*, was in accordance with all legal standards and practices. She denies that the doctrine of *res judicata* is applicable to this case.

Tenn. Code Ann. § 54-14-114 provides that “[e]ither party may within thirty (30) days appeal to the court from the finding of the jury of view, and demand a trial by a jury and, upon giving security for costs, may have a new trial before a jury of twelve (12) persons to be summoned and impaneled by the court in the usual way.” Defendants direct us to the case of *Flowers v. Cherry*, 8 S.W.2d 483 (Tenn. 1928), decided under the earlier version of the statutory scheme in Shannon’s Code, which indicates that a direct appeal may be made from the jury of view without recourse to a new trial before a jury of twelve. In the instant case, Defendants struck their motion for a new trial, and the trial judge entered an “Order Confirming Verdict and Final Judgment.” Thus, neither the power to condemn nor the finding of the jury of view is before us for consideration. Rather, we are asked only to review procedural decisions of the trial court.

III.

Our standard of review for this issue is an abuse of discretion standard. According to the Tennessee Supreme Court, “[a] trial court abuses its discretion only when it applies an incorrect legal standard, or reaches a decision which is against logic or reasoning that causes an injustice to the party complaining.” *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001) (internal quotations omitted).

IV.

A.

Defendants contend the action of the trial court was plainly prejudicial to them because it afforded Plaintiff a second trial on a cause of action that she pleaded originally and “abandoned” before the first trial, with the subsequent award of a judgment for an easement over Defendants’ property. They argue that the order of August 5, 2002, is erroneous for many reasons. Defendants

assert that Plaintiff was required to first move pursuant to Rules 59 or 60 of the Tennessee Rules of Civil Procedure for relief from the judgment of dismissal of the prescriptive easement claim before she could seek to amend her complaint. Defendants contend further that Plaintiff failed to file a motion to amend. They also assert that Plaintiff's actions were unfairly taken after Defendants had already filed a motion to dismiss the claim for statutory condemnation on the grounds of insufficiency of the original complaint to state such a cause of action. Defendants additionally argue that the trial court's comment that Plaintiff may have been able to proceed on her "alternative cause of action under T.C.A. § 54-14-101" as he ruled against her from the bench should not have been treated as an invitation to amend so as to afford Plaintiff a second trial on a claim pleaded in her original complaint. Accordingly, Defendants contend that a final judgment of dismissal of the entire case should have been entered following the directive of the trial court from the bench on April 24, 2002.

Plaintiff argues that she did not request an amendment to her original complaint and/or a new trial because it was unnecessary to seek to overturn the judgment issued by the trial court when the alternative claim had been retained in the court's directive. She argues that it was needless for her to file a motion to amend the complaint when she was not seeking to pursue a new cause of action. As for Defendants' assertion that Plaintiff's statutory condemnation claim should have been barred because the trial court summarily denied Defendants' motion to dismiss addressing the inadequacy of Plaintiff's pleading of the claim, Plaintiff opines that the trial court's denial of Defendants' dispositive motion displayed the court's desire to allow Plaintiff to pursue an easement by condemnation should the prescriptive easement not be granted. Plaintiff contends that this case is simply about the trial court dismissing one claim with prejudice and allowing the pursuit of the alternate claim for relief. She distinguishes the case on which Defendants rely, *Isbell v. Travis Elec. Co.*, No. M1999-00052-COA-R3-CV, 2000 WL 1817252 (Tenn. Ct. App. M.S., filed December 13, 2000), from the matter before us on the ground that in *Isbell* the moving party did not pursue his claim for invasion of privacy, a claim not previously alleged, until after the judgment of the trial court and in reaction to the judge's prompting. According to Plaintiff, in this case, it was the trial court that reacted to the alternative claim for relief *already* asserted. Additionally, in the instant matter, the trial court signed and filed an order stating that Plaintiff was entitled to pursue the alternate form of relief. Plaintiff asserts that it is significant that the trial court, when faced with two differently worded orders, signed the order that contained the instruction. Plaintiff contends that the rejection of Defendants' proposed order and adoption of Plaintiff's order were well within the discretion of the trial court.

The evidence before us clearly established that Plaintiff's property is landlocked. As such, she is statutorily entitled to an adequate and convenient outlet to a public road. Defendants' assertion that Plaintiff simply "abandoned" her cause of action under Tenn. Code Ann. § 54-14-101 *et seq.* strains credibility, particularly in view of Plaintiff's relatively weak claim for a prescriptive easement. No evidence before us supports Defendants' contention that Plaintiff abandoned her statutory claim. This court cannot make findings based on speculation unsupported by appropriate allegations and proof. *Spunt v. Brumby*, 518 S.W.2d 345, 347 (Tenn. 1974). If we deign to speculate in this matter, we may just as well find that the trial court, while still on the bench, simply

neglected to adequately address and clarify the reserved issue and allowed for correction of its oversight in its order. We find that the trial court's true intention was reflected in the August 5, 2002 order, as a court speaks through its orders. **Palmer v. Palmer**, 562 S.W.2d 833, 837 (Tenn. Ct. App. 1977).

The burden of establishing abuse of discretion is on the party seeking to overturn the trial court's ruling. **Summers v. Cherokee Children & Family Servs., Inc.**, 112 S.W.3d 486, 530 (Tenn. Ct. App. 2002). Under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to [the] propriety of the decision made." **State v. Scott**, 33 S.W.3d 746, 752 (Tenn. 2000). The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court. **Eldridge**, 42 S.W.3d at 85. The abuse of discretion standard is a review-constraining standard of review that calls for less intense appellate review and, therefore, less likelihood that the trial court's decision will be reversed. **State ex rel. Jones v. Looper**, 86 S.W.3d 189, 193 (Tenn. Ct. App. 2000). In **Hill v. Giddens**, No. W2006-02496-COA-R3-CV, 2007 WL 4200417 (Tenn. Ct. App. W.S., filed November 29, 2007), a case in which the trial court was charged with abuse of discretion for hearing motions for summary judgment on multiple occasions, a panel of this court noted

that such procedural matters are within the discretion of the court, and thus the decision of the trial court in matters of practice will not be disturbed "unless plain rules of proceeding are clearly violated."

Id. at *8 (quoting **Dews v. Eastham**, 10 Tenn. 463 (Tenn. Err. & App. 1830)).

It is within the purview of the trial court to determine how it runs its court. *Id.* While the procedure followed by the trial court in this instance was perhaps unorthodox, it is clear to us that reasonable minds could disagree as to the propriety of the decision made. Thus, on this record, we cannot conclude that the trial court committed error or abused its discretion.

B.

Defendants submit that the entry of the "Order Confirming Verdict and Final Judgment" as well as that portion of the trial court's order of August 5, 2002, that preserved the "alternative cause of action" and allowed the filing of Plaintiff's amended complaint is barred by the doctrine of *res judicata*. We disagree with this approach. The order of August 5, 2002, was not a final judgment, as it did not dispose of all issues before the court at that time. See Tenn. R. Civ. P. 54.02. The order entered at that time was only with reference to the prescriptive easement cause of action and did not dispose of the alternative claim for relief. Accordingly, the doctrine of *res judicata* has no applicability to this case.

V.

We affirm the judgment of the trial court and remand for whatever further proceedings may be required. The costs of this appeal are taxed to the appellants, James W. Roberts and Martha C. Roberts.

CHARLES D. SUSANO, JR., JUDGE